

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT
OF WEST VIRGINIA

Danny R. Wells,
Plaintiff

Vs.

Charles R. Garten, Judicial
Investigation Commission,
Clerk of the Court,
Supreme Court of Appeals,
State of West Virginia, and

P.M. Carper, Jr., Investigator,
Judicial Investigation Commission,
West Virginia Supreme Court of Appeals

Sargeant Jack Chambers
West Virginia office of
Public Safety

Town of Chapmanville
Mayor Freeman

CA 2:04-0774

FILED

JUL 27 2004

TERESA L. DEPPNER, CLERK
U.S. District & Bankruptcy Courts
Southern District of West Virginia

NOW COMES Plaintiff, Danny R. Wells, who deposes and says:

1. Plaintiff is a citizen of the United States of America,
and, at the time of said action herein described, was a
resident of Logan County, West Virginia.

2. Plaintiff is currently incarcerated at the Federal
Correctional Institution, located in Morgantown, West
Virginia.

3. Defendants Charles R. Garten and P.M. Carper, Jr.,
(hefeafter Garten and Carper) were at all times material
hereto, duly appointed, employed and acting agents of the
West Virginia Supreme Court of Appeals, a governmental
subdivision of the State of West Virginia.

(2)

4. The instant action arises under provisions of Title 5 §552 of the United States Code, titled Public Information: Agency Rules, Opinions, Orders, Records and Proceedings, and under §552(a), titled Records Maintained on Individuals.

5. This Honorable Court has jurisdiction of this cause under Title 5 U.S.C. §552(a)(g)(B) which states:

"Whenever any Agency refuses to comply with an individual request under subsection (d)(1) of this section, the individual may bring a civil action against the agency, and the District Courts of the United States shall have jurisdiction in the matters under the provisions of this subsection".

6. Each and all of the acts of the defendants herein were done by defendants, and each of them, but under the color and pretense of the statutes of the State of West Virginia.

7. On or about February 1, 2002, one Nick Rodighiero, a police officer of the City of Chapmanville, West Virginia, filed a complaint with the Judicial Investigation Commission of the State of West Virginia (whose address is Box 1629, Charleston, West Virginia 25326-1629, against Magistrate Judge Danny R. Wells, the Plaintiff in this cause.

8. Magistrate Judge Wells filed an answer to said complaint

(3)

on February 18, 2002, directed to Charles R. Garten, Judicial Disciplinary Counsel for the West Virginia Supreme Court of Appeals.

9. In Plaintiff's answer to Garten, Plaintiff offered to submit to any and all tests, including a polygraph, in relation to the malicious accusations made by Rodighiero, and to make himself available for consultations.

10. Between the filing of Rodighiero's complaint on February 1, 2002, and March 3, 2003, the date of Plaintiff Wells's conviction, Plaintiff was never afforded opportunity to confront his accuser, Rodighiero, in response to his complaint against Plaintiff Wells.

11. Sometime between February 18, 2002, and September 26, 2002, Plaintiff received a telephone call from P. M. Carper, Jr.'s Assistant, Tammy Hall, and asked to call Carper, who identified himself as an investigator for the Judiciary Investigation Commission.

12. Defendant Carper identified himself via telephone to Plaintiff Wells as a retired FBI Investigator. This conversation was the only conversation between Plaintiff Wells and the Judiciary Investigation Commission.

(4)

13. On September 26, 2002, Karen Jeffrey, Secretary to Judge Eric H. O'Briant in the Seventh Judicial Circuit, sent a transmission via fax to Carper, the subject being the case entitled State of West Virginia V. David Booth, Logan County case Number 02-FJ-3-0. Mr. Booth was alleged by the government to be party to one of the predicate acts cited in prosecution of United States V. Danny R. Wells.

14. On May 3, 2004, Plaintiff Wells sent a request to the Clerk of the Court, West Virginia Court of Appeals, in which he requested a true and complete copy of the complaint filed against him by Nick Rodighiero.

15. On May 19, 2004, Plaintiff Wells recieved a reply from Ms. Edythe Nash, Deputy Clerk of the Court, Supra, informing Plaintiff that the West Virginia Supreme Court of Appeals does not act as custodian for documents filed with the Judiciary Investigation Commission, and directed, in accordance with West Virginia Code 29B 1-3 to file the request directly with Defendant Garten.

16. On May 24, 2003, Plaintiff Wells sent said request for a true and complete cvopy of the investigator's Report to Defendant Garten.

(6)

WHEREFORE, by reason of remedies defined in Title 5 U.S.C. §552(a)(g)(1) through (5) Plaintiff prays this Honorable Court to:

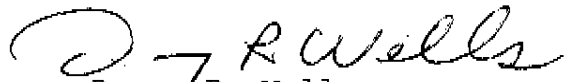
(A) Enjoin Defendants from further withholding the records herein described, and order the production of said records which were improperly withheld from Plaintiff Wells,

(B) Assess against Defendants reasonable attorney fees and any other costs of litigation incurred by Plaintiff,

(C) Assess damages sustained by Plaintiff Wells arising from Defendants refusal and failure to comply with Title 5 U.S.C. §552(a), and

(D) For such other and further relief as the court may deem fitting and proper.

Further, I, Danny R. Wells do hereby attest and certify that the information herein contained to be complete, true and correct to the best of my knowledge and belief.



Danny R. Wells
06988-088
Federal Correctional Institution
P. O. Box 1000
Morgantown, WV 26507-1000

Mr. Danny R Wells, 06988-088
Former Magistrate Judge
FCI
P.O. Box 1000
Morgantown W.V. 26507

July 24, 2004

Clerk Of the Court
United States District Court
300 Virginia Street East
Charleston, W.V. 25301

Dear Clerk,

Enclosed please find a civil action, which I wish to file. I have no income and have recently applied for In Forma Pauperis Status, in case no. 2:04- CV - 00631. Also please consider this as A motion to the court to allow this civil action and case no. 2:04- CV - 00631 to be combined together. I would also request that an Attorney be appointed to represent me in both matters, or to my release, at which time I would be more than happy to represent myself. I am requesting immediate action to require the Judicial Investigation commission to release the requested tapes and documents relating to Rodighiero V. Danny R wells.

There is also information in the case David Bumgarner V. Nick Rodighiero that proves a Civil Right Violation. I am also requesting a copy of this case, thanking you in advance for your help regarding this matter.

Sincerely,


Danny R Wells